

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TYWAN OSBORNE,

Plaintiff,

vs.

ROBERT WELCH, Warden,

Defendant.

) **Case No. 1:09 CV 2893**
)
) **Judge Dan Aaron Polster**
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**
)
)
)

Before the Court is the Report and Recommendation of Magistrate Judge (“R&R”) (**Doc #: 14**), recommending that the Court dismiss the application for writ of habeas corpus filed by Petitioner Tywan Osborne pursuant to 28 U.S.C. § 2254 (“§ 2254 petition”) (**Doc #: 1**). Osborne is presently serving an aggregate prison sentence of twenty-one years for conspiracy to commit murder, assault, kidnapping and aggravated robbery. Osborne challenges the constitutionality of his convictions on the grounds of ineffective assistance of counsel and insufficiency of the evidence. Having reviewed the record, the Magistrate Judge recommends that the Court dismiss both grounds for relief based upon the merits.

Under the relevant statute:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1) (2009) (emphasis added). The R&R was issued on May 26, 2011. The

Magistrate Judge notified the Petitioner that any objections must be filed within fourteen days after the party has been served with a copy of the R&R. (See Doc #: 14, at 29; non-document entry of May 26, 2011.) It is now 40 days since the Petitioner was served with the R&R, and he has neither filed an objection nor requested an extension of time to file one.

The failure to timely file written objections to a Magistrate Judge's report and recommendation constitutes waiver of a *de novo* determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The Court has reviewed the thorough, well-written R&R and agrees with the Magistrate Judge's findings and recommendations for the reasons explained in detail therein. Accordingly, the Court hereby **ADOPTS** the R&R (**Doc #: 14**) and **DENIES** the § 2254 petition (**Doc #: 1**).

IT IS SO ORDERED.

/s/ Dan Aaron Polster July 5, 2011
Dan Aaron Polster
United States District Judge